Return To Work Regulations	RULEMAKING COMMENTS 4th 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	Commenter agrees with regulations as written.	Tina Coakley Legislative & Regulatory Analyst – The Boeing Company August 4, 2006 Written Comment	No response needed.	None.
Section 10003 – Body of Form	Commenter proposes the following modifications to the Notice of Offer of Regular Work form: **Notice of Offer of Regular Work – 10003** ***The employee must accept, reject, or object to this offer for regular work and return this form to the employer or claims administrator listed on page one within 20 calendar days of receipt of the offer or the condition that work be located within a reasonable distance of the employee's residence at the time of injury ~~it~~ will be deemed ~~that the employee has~~ to be waived ~~the right to object to the location or shift~~. The condition will be conclusively deemed to be waived if the offered work is at the same location and shift. The employee should keep a copy of this form for his or her records.*** **Offer of Regular Work at Same Location and/~~or~~ Shift** ___~~*I object to this offer because the job shift that has been offered is different than the job shift I held at the time of my injury. I understand if the claims administrator does not agree with this objection, my remaining permanent disability weekly benefit payment may be decreased by 15%.*~~	Brenda Ramirez Claims and Medical Director – CWCI August 7, 2006 Written Comment Michael McClain General Counsel & Vice President – CWCI August 7, 2006 Written Comment	We disagree. We believe our wording is easier to understand. The proposed language is confusing. Allowing the employee to set forth if s/he is objecting to the location or shift provides the employer with an opportunity to address the objection and, if possible, alter the offer.	None.

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	Discussion Labor Code section 4658.1 requires regular work to be located within a reasonable commuting distance; however there is no shift requirement. 4658.1(a) "Regular work" means the employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury. Subsection (f) contains the only reference to shift in Labor Code section 4658.1 and only specifies that the distance is conclusively deemed reasonable if the offered work is at the same location and the same shift as the employment at the time of injury. In other words the employee has the right to object to the distance only if the work is not at the same location and the same shift as the employment at the time of injury. It does not give the employee the right to object to the shift per se. As drafted, the proposed regulation gives the injured employee the right to object to an offer of regular work on a different shift. We believe the changes we recommend add clarity, remove the impression that the employee may object to the shift and require the employee to indicate the additional commuting distance. <u>Authority:</u> The regulation as drafted expands			

	the scope of the statute and establishes a new right not encompassed in the enabling act. Government Code section 11342.2 states: Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. There is no agency discretion or authority to issue a regulation that is inconsistent with the governing statute. Communities for a Better Environment v. California Resources Agency (2002) 126 CR2d 441, 103 CA4th 98; Pulaski v. California Occupational Safety and Health Standards Board (1999) 90 CR2d 54, 75 CA4th 1315.			
Section 10003 – Proof of Service	Commenter proposes that the proof of service be modified to state that service be made by mail and/or hand delivery and that different methods of service be available for different parties. Commenter proposes that a section be added under both methods of service that the names of the parties served can be noted under each method. **Discussion** The proposed regulation requires checking one method of service. The modifications we recommend will clarify that service to different individuals may be made by different	Brenda Ramirez Claims and Medical Director – CWCI August 7, 2006 Written Comment Michael McClain General Counsel & Vice President – CWCI August 7, 2006 Written Comment	We disagree. The proof of service provides the flexibility to serve parties either by hand or personally. The form is set up to help parties who do not know what must be set forth in a proof of service. Nothing prevents the serving party from making a notation next to the individuals served if different individuals are served in different ways.	None.

	methods of service. For example, an employer or claims administrator may hand deliver the notice to the injured employee and may mail a copy to the applicant's attorney.			
Section 10003 – Proof of Service	The proposed language for the "Proof of Service by Mail or Hand Delivery" limits who is allowed to prepare the proof of service to "a citizen of the United States" and requires the same person to place the envelope in the "United States mail." The California Code of Civil Procedure (CCP) does not require citizenship to prepare the proof of service (1013(a) and 2015.5). In addition, the CCP allows a total of four methods for providing a proof of service, including a method that does not require the same person signing the document to also deposit the document in the US Mail. As currently written, the preparation of such a document would potentially limit the hiring practices and impacts the work flow processes of claims administrator who have moved towards electronic claims adjudication. **Recommendation** Commenter recommends making Proof of Service by Mail optional and, where provided on a voluntary basis, to only be compliant with the California Code of Civil Procedure (CCP) sections 1013(a) and 2015.5.	Jose Ruiz Claims Operations Manager State Compensation Insurance Fund August 7, 2006 Written Comment	We agree to strike the words "a citizen of the United States" as a non-substantive change. We disagree that the proof of service should be optional, as it is necessary to know when the parties were served in order to know if the notice complies with the Labor Code requirements.	We will strike the words "a citizen of the United States" as a non-substantive change.
Section 10002(f)	The proposed text states: (f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot	Jose Ruiz Claims Operations Manager State Compensation Insurance Fund August 7, 2006 Written Comment	We disagree. Labor Code section 4658(d)(3)(A) provides that if the employer makes a proper offer of modified, alternative or regular work, whether or not the employee accepts it, the employer is entitled to a 15% reduction of permanent disability	None.

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	lawfully perform regular, modified or alternative work ~~*due to the employee's immigration status*~~, the employer is not required to provide the regular, modified or alternative work. The proposed language for this regulation clearly states that the employer is not required to provide work when the employee cannot lawfully perform work. However, the regulation lacks guidance on the application of the +/- 15% adjustment to the permanent disability indemnity benefit. Clarification is needed on this public policy issue and the regulation should clearly state how and when the PD adjustment requirement should be applied. • Is the employee entitled to a 15% increase in the weekly permanent disability rate because the employer ultimately did not provide the work as described in Labor Code §4658? • Is the employee's weekly PD rate subject to a 15% decrease because the work was offered but could not be provided due to the employee's unlawful work status? • Is the intent to eliminate a PD adjustment either up or down pursuant to CCR §10002 when subsection (f) is operational? • When would the adjustment to the		benefits. It also provides that the reduction shall be made with regard to each remaining payment after the offer was made. Thus, if a valid offer was made, the statute is clear that the reduction applies and that the reduction begins when the offer is made. Section 10002(f) clarifies only that if the employer learns that he cannot legally hire the employee after the offer was made, then he does not have to.	

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	PD weekly rate be applied (i.e. Date of employer's knowledge? Date employee left work? The next payment date? Is the +/-15% adjustment retroactively applied?)?			
Section 10003	Commenter believes these new regulations seem unduly excessive on the claims administrator and employer. When an injured worker returns to work they are provided with a Benefit Information Notice stating that they have returned to work. Commenter states that an extra form such as the one that is being suggested within Title 8 CCR 10003 is redundant and extremely unnecessary Section 10003 represents an unnecessarily onerous requirement for the claims administrator. While it is not unreasonable for the DWC to expect that the employers/claims administrators document issue regarding return to work in some way (Benefit Information Notices), a three page document (the DWC AD Form 10003) that must be sent to at minimum twice the number of injured workers than the voucher and the 10133.53 Mod/Alt Offer Form combines is excessive. The necessary documentation that the injured worker has returned to work would be contained in the medical records and the state mandated benefit information notice. Also, if the employee has returned to work, the requirement for additional paperwork to prove this fact is burdensome.	Linda A. Larkins Claims Manager Workers' Compensation Administrators, LLC August 7, 2006 Written Comment	We disagree. The forms and regulations are required by Labor Code section 4658(d)(2) and (3).	None.